

HOUSE BILL 54

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 48,
Chapter 1, Part 1 and Title 56, Chapter 6, Part 1,
relative to the regulation of financial services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-1-102(12), is amended by adding the following language after the first sentence of the subdivision:

"Investment adviser" includes a financial planner or other person who, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or who holds oneself out as providing investment advice to others for compensation.

SECTION 2. Tennessee Code Annotated, Section 48-1-102(13)(A), is amended by adding the following as a new subdivision:

() Provides investment advice or holds oneself out as providing investment advice;

SECTION 3. Tennessee Code Annotated, Section 48-1-102, is amended by adding the following as a new subdivision:

() "Department" means the department of commerce and insurance;

SECTION 4. Tennessee Code Annotated, Section 48-1-103(a)(13)(A)(ii), is amended by deleting the language "one million dollars (\$1,000,000)" and substituting "five million dollars (\$5,000,000)".

SECTION 5. Tennessee Code Annotated, Section 48-1-103(a)(13)(A)(ii), is amended by deleting "offer" and substituting "offer. The commissioner may, by rule, require a sales report in a designated format".

SECTION 6. Tennessee Code Annotated, Section 48-1-103(a)(13)(A), is amended by adding the language ", trust company," after "bank" wherever it appears.

SECTION 7. Tennessee Code Annotated, Section 48-1-103(b)(9)(A)(iii)(c), is amended by deleting the subdivision.

SECTION 8. Tennessee Code Annotated, Section 48-1-110(a)(3), is amended by deleting the subdivision and substituting:

(3)

(A) The commissioner may require, by rule and at the applicant's expense, an agent or investment adviser representative applicant to submit a complete and legible set of fingerprints, in a format prescribed by the commissioner, to the commissioner or to the Tennessee bureau of investigation, for the purpose of obtaining a criminal background check from the Tennessee bureau of investigation or the federal bureau of investigation.

(B) The commissioner may conduct a criminal background check of each applicant described in subdivision (a)(3)(A) by using information that is:

(i) Provided by the applicant under this subsection (a); and

(ii) Made available to the commissioner by the Tennessee bureau of investigation, the federal bureau of investigation, or another law enforcement agency.

(C) The commissioner may:

(i) Enter into an agreement with the Tennessee bureau of investigation to administer a criminal background check authorized under this subdivision (a)(3); and

(ii) Authorize the Tennessee bureau of investigation to collect from the applicant the costs incurred by the department in conducting the criminal background check.

SECTION 9. Tennessee Code Annotated, Section 48-1-110(f), is amended by deleting subdivision (4) and substituting:

(4) To determine eligibility for registration, the commissioner may require by rule:

(A) Evidence of the qualifications and business history of the applicant and, if appropriate, the qualifications and business history of an affiliate, partner, officer, director, or other person occupying a similar status or performing similar functions for the applicant;

(B) Evidence of the applicant's injunctions, administrative orders, or misdemeanor convictions involving a security or an aspect of the securities business, if any, and the applicant's felony convictions, if any; and

(C) Evidence of the applicant's financial condition and history.

(5) Registration as an issuer-dealer becomes effective at twelve o'clock (12:00) noon, central time, of the thirtieth day after the department receives the completed application and the appropriate fee, if any, unless the department institutes a denial proceeding or grants an earlier effective date by order of the commissioner. The department may deny, revoke, or suspend the registration if the action is in the public interest and if the applicant or an affiliate, partner, officer, director, or other person occupying a similar status or performing similar functions:

(A) Has filed a registration application that included an untrue or misleading statement of a material fact;

(B) Has been convicted within the past ten (10) years of a misdemeanor involving an aspect of the securities business or an investment-related business, or a felony;

(C) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing a conduct or practice involving an aspect of the securities business or an investment-related business; or

(D) Is the subject of an order entered within the past ten (10) years by an agency having regulatory authority with respect to the securities business or investment-related business, denying, revoking, or suspending a registration as a broker-dealer, agent, investment adviser, investment adviser representative, issuer-dealer, or the substantial equivalent of those terms as defined or described in this part, or ordering the person to cease and desist from continuing a conduct or practice involving an investment-related transaction based on fraud, deceit, or misrepresentation, or applicable law similar to § 48-1-121(a) and (b).

SECTION 10. Tennessee Code Annotated, Section 48-1-111(d), is amended by adding the following as a new subdivision:

(4) All working papers, recorded information, documents, and required records and copies of working papers, recorded information, documents, and required records produced by, obtained by, or disclosed to the commissioner or another person in the course of an examination made under this chapter are confidential and shall not be made public by the commissioner or another person. This subdivision (d)(4) does not prohibit the commissioner from disclosing the content of an examination as provided in this subdivision.

SECTION 11. Tennessee Code Annotated, Section 48-1-112, is amended by adding the following as a new subsection:

() The commissioner may bar or censure a registrant or an officer, director, partner, or other person occupying a similar status or performing similar functions for a registrant, or restrict, condition, or limit a registrant as to a function or activity of the business for which registration is required in this state.

SECTION 12. Tennessee Code Annotated, Section 48-1-116(e), is amended by adding the following as a new subdivision:

() The commissioner may, after notice and opportunity for a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, enter an order of restitution, disgorgement, including interest and legal interest, or rescission, directed to a person who has violated this chapter, a rule authorized by this chapter, or an order issued pursuant to this chapter. Restitution, disgorgement, or rescission is in addition to any other remedy or penalty provided for under this chapter.

SECTION 13. Tennessee Code Annotated, Section 48-1-125(a)(1)(D), is amended by deleting the language "§ 18(b)(4)(E)" and substituting "§ 18(b)(4)(F)".

SECTION 14. Tennessee Code Annotated, Section 48-1-125, is amended by adding the following new subsection:

() The following are subject to a late filing fee as established by the commissioner by rule:

- (1) An initial notice filing received more than thirty (30) days after the date of first sale;
- (2) An initial notice filing received more than one (1) year from the date of the first sale; or
- (3) A late filed renewal notice.

SECTION 15. Tennessee Code Annotated, Title 48, Chapter 1, Part 1, is amended by adding the following as a new section:

48-1-128. Broker-dealers and agents seeking expungement of customer dispute information from the Central Registration Depository (CRD) system.

(a)

(1) Except as otherwise provided in subdivision (a)(2), a broker-dealer or agent registered in this state who seeks to expunge information from the Central Registration Depository (CRD) system through the FINRA expungement process must name the department as a party to the expungement proceedings and serve the commissioner with all filings, as well as any other appropriate documents.

(2) Notwithstanding subdivision (a)(1), upon request of the party seeking expungement, the commissioner may waive the obligation of the broker-dealer or agent registered in this state to name the department as a party to the expungement proceedings if the commissioner determines that:

(A) The expungement relief is based on affirmative judicial or arbitral findings that:

(i) The claim, allegation, or information is factually impossible, false, or clearly erroneous; or

(ii) The registered person did not perform or aid, abet, counsel, command, induce, conspire with, or fail to reasonably supervise another in performing the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or

(B)

(i) The expungement relief is based on judicial or arbitral findings, other than those described subdivision (a)(2)(A);

(ii) The expungement relief and accompanying findings on which the relief is based are meritorious; and

(iii) The expungement would have no material adverse effect on investor protection, the integrity of the Web CRD system, or regulatory requirements.

(b) As used in this section, unless the context otherwise requires, "sales practice violation" means conduct directed at or involving a customer that would constitute a violation of:

(1) The rules for which a person could be disciplined by a self-regulatory organization;

(2) A provision of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.); or

(3) A state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security, or in connection with the rendering of investment advice.

SECTION 16. Tennessee Code Annotated, Section 56-6-120(h), is amended by deleting "receiving a complaint, or the entry of an inquisitorial order, whichever comes first" and substituting "the entry of an inquisitorial order".

SECTION 17. Tennessee Code Annotated, Section 56-6-120(h), is amended by deleting the last sentence of the subsection.

SECTION 18. Tennessee Code Annotated, Section 48-1-118(b)(2), is amended by deleting the language "of commerce and insurance".

SECTION 19. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that

can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 20. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act. The Tennessee Code Commission is further requested to amend the heading to Tennessee Code Annotated, Section 48-1-110, by deleting the existing heading and substituting "**Registration as a broker-dealer, agent, investment adviser, or investment adviser representative; requirements and procedures.**".

SECTION 21. This act takes effect upon becoming a law, the public welfare requiring it.